

DISCUSSION

A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

B. Claims

Petitioner seeks federal habeas corpus relief by raising two claims: (1) ineffective assistance of counsel and (2) improper denial of motion to substitute counsel. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

C. Motion for Appointment of Counsel

Petitioner's motion (doc # 2) for appointment of counsel is DENIED without prejudice. See Knaubert v. Goldsmith, 791 F.2d 722, 728 (9th Cir. 1986) (unless an evidentiary hearing is required, the decision to appoint counsel in habeas corpus proceedings is within the discretion of the district court).

Petitioner clearly presented his claims for relief in the petition and an order to show cause is issuing. Accord Bashor v. Risley, 730 F.2d 1228, 1234 (9th Cir. 1984) (although petitioner had no background in law, denial of appointment of counsel within discretion of district court where petitioner clearly presented issues in petition and accompanying memorandum). The court will appoint

1 counsel on its own motion if a evidentiary hearing is later required. See
2 Knaubert, 791 F.2d at 728 (appointment of counsel mandatory if evidentiary
3 hearing is required).

4 CONCLUSION

5 For the foregoing reasons and for good cause shown,

6 1. The clerk shall serve by certified mail a copy of this order and the
7 petition and all attachments thereto on respondent and respondent's attorney, the
8 Attorney General of the State of California. The clerk also shall serve a copy of
9 this order on petitioner.

10 2. Respondent shall file with the court and serve on petitioner, within
11 60 days of the issuance of this order, an answer conforming in all respects to Rule
12 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of
13 habeas corpus should not be granted. Respondent shall file with the answer and
14 serve on petitioner a copy of all portions of the state trial record that have been
15 transcribed previously and that are relevant to a determination of the issues
16 presented by the petition.

17 If petitioner wishes to respond to the answer, he shall do so by filing a
18 traverse with the court and serving it on respondent within 30 days of his receipt
19 of the answer.

20 3. Respondent may file a motion to dismiss on procedural grounds in
21 lieu of an answer, as set forth in the Advisory Committee Notes to Rule 4 of the
22 Rules Governing Section 2254 Cases. If respondent files such a motion,
23 petitioner shall file with the court and serve on respondent an opposition or
24 statement of non-opposition within 30 days of receipt of the motion, and
25 respondent shall file with the court and serve on petitioner a reply within 15 days
26 of receipt of any opposition.

1 4. Petitioner is reminded that all communications with the court must
2 be served on respondent by mailing a true copy of the document to respondent's
3 counsel. Petitioner must also keep the court and all parties informed of any
4 change of address.

5 SO ORDERED.

6 DATED: Nov. 14, 2007



CHARLES R. BREYER
United States District Judge